

Sheet Metal Workers Local 17, a/w Sheet Metal Workers International Association and Associated General Contractors of Massachusetts, Inc. and Environmental Interiors, Inc. and Carpenters Union Local 33, a/w United Brotherhood of Carpenters & Joiners of America, AFL-CIO.
Case 1-CD-686

28 December 1983

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed by AGC, alleging that Sheet Metal Workers Local 17 violated Section 8(b)(4)(i) and (ii)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring Environmental to assign work to its members rather than to employees represented by Carpenters Local 33.

Pursuant to notice, a hearing was held before Hearing Officer Joseph F. Griffin on 5 and 6 April 1983. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, briefs were filed by Local 17 and Local 33, and a joint brief was filed by Environmental and AGC.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. THE BUSINESS OF THE EMPLOYERS

Volpe, Dimeo, O'Connell and Gutierrez (Volpe), a joint venture, is a general contractor in the building construction industry. It is a Massachusetts partnership and annually receives goods and materials valued in excess of \$50,000 directly from points located outside Massachusetts.¹

Environmental is a New York corporation with its principal office in Nashua, New Hampshire, and doing business in Boston, Massachusetts. Environmental is engaged in the business of installing ceilings and ceiling support systems, and annually receives goods and materials valued in excess of \$50,000 directly from points located outside New Hampshire and Massachusetts.

¹ AGC is an organization which functions as the labor representative of its members. Volpe is a member of AGC. The AGC filed the instant charges in its capacity as Volpe's labor representative.

The parties stipulated, and we find, that Volpe and Environmental are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purpose of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 17 and Local 33 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute consists of the handling, distribution, and installation of bent metal coves, acrylic louvers, and metal wall moldings at the construction site of the Department of Transportation building located at Park Square, Boston, Massachusetts.

B. *Background and Facts of the Dispute*

Since January 1981 Volpe has been the general contractor for the construction of the Department of Transportation building in Boston, Massachusetts. Pursuant to a subcontract, Environmental began in December 1982 the ceiling work, including installation of the bent metal coves and acrylic louvers. Environmental assigned the work to its employees represented by Local 33 pursuant to its collective-bargaining agreement with Local 33.² In January 1983³ Edward Marks, business representative for Local 17, approached Volpe's superintendent, Gregory Williams, and claimed the work of installing the bent metal coves, acrylic louvers, and metal wall moldings.⁴

On 25 January Local 17 filed a dispute with the Boston Local Board for the Adjustment of Jurisdictional Disputes for the Construction Industry (Boston Local Board). That Local Board met on 1 February to hear the dispute. Local 33 General Business Agent Andris Silins made an appearance and urged the Local Board not to hear the dispute until the International presidents of the Unions involved met and attempted to resolve the dispute.⁵

² As a member of AGC, Environmental became a party to the areawide collective-bargaining agreement between AGC and various Carpenter Locals, including Local 33.

³ All dates are in 1983 unless otherwise noted.

⁴ Neither Volpe nor Environmental has a collective-bargaining agreement with Local 17.

⁵ On 1 April 1978 the International presidents of the Sheet Metal Workers Union and Carpenters Union entered into an agreement entitled "Installation and Erection of Metal Suspended Ceiling Systems" designating certain specified work to be performed by each union and referring any jurisdictional dispute arising out of the agreement to the International presidents for settlement.

The Local Board acceded to the request of Local 33 and deferred hearing the case for 10 working days during which time the International presidents could meet. However, the presidents were unable to resolve the dispute. Therefore, the Boston Local Board heard the dispute on 22 February, and awarded the work to Local 17.⁶

Pursuant to the award, Marks again contacted Williams and claimed the work. Marks renewed his claim in early March and threatened to take some job action, including picketing, if Volpe did not force Environmental to reassign the work to Local 17. On 4, 7, and 8 March Local 17 picketed the jobsite with signs stating, "Volpe, Dimeo, O'Connell and Gutierrez Unfair to Sheet Metal Workers Local 17." Approximately 200 workers honored the picket line, causing a complete shutdown of work at the jobsite.

C. Contentions of the Parties

Environmental, AGC, and Local 33 contend that the dispute is properly before the Board because there does not exist any method for the voluntary settlement of the instant jurisdictional dispute to which all necessary parties are bound and that Environmental's assignment of the disputed work was proper in light of certain factors usually considered by the Board in these matters. They also urge that the scope of the Board's award be broad enough to include future disputes on similar projects.

Local 17 contends that the Board is without jurisdiction to determine the merits of the dispute under Section 10(k) of the Act because the parties have agreed on a method for the voluntary adjustment of the dispute, for the reasons expressed more fully *infra*. Alternatively, in the event the dispute is properly before the Board, Local 17 urges that the award be limited to the project which is the subject of the present dispute.

D. Applicability of the Statute

Before the Board may proceed to the determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that (1) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and (2) the parties have not agreed on methods for the voluntary adjustment of the dispute.

As to (1), above, it is not disputed that Local 17 threatened to picket and did in fact picket the project site to protest Environmental's assignment of the disputed work to employees represented by Local 33 rather than Local 17. Accordingly, we

⁶ Local 33, Volpe, and Environmental made no appearance at the 22 February hearing.

find that reasonable cause exists to believe that Local 17 violated Section 8(b)(4)(D) of the Act.

With respect to (2), above, Local 17 contends that two methods for the voluntary adjustment of the dispute exist, i.e., the Boston Local Board and the 1978 Metal Suspended Ceiling Systems agreement. Specifically, Local 17 contends that both Volpe and Environmental are bound by the decision of the Boston Local Board by virtue of their membership in the AGC, which is a party to the Boston Local Board. Moreover, Thomas Head, president of Environmental, testified that Environmental was bound by the 1978 agreement between the unions by virtue of its collective-bargaining agreement with Local 33.

On the basis of the facts urged by Local 17 and the entire record in this case, we can find no basis on which to conclude that all of the necessary parties to the dispute have agreed on a method for the voluntary adjustment of the present dispute.

First, as to the Boston Local Board, we note that article II, section 6 of the areawide collective-bargaining agreement between the Carpenters Union and the AGC, to which both Volpe and Environmental are signatories, provides:

In keeping with the voluntary nature of the new "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry" which went into effect June 1, 1975, the Associations signatory hereto are recommending to their Members and to all Employers who sign this Agreement that they execute individual voluntary stipulations that they will be bound by the new plan.

Following this provision is a recommended individual stipulation form to be filled out by the employer who agrees to be bound by the decisions and awards of the Boston Local Board.

It is undisputed that neither Volpe nor Environmental ever executed such a stipulation. Under these circumstances, we find that Volpe and Environmental are not bound by or obligated to abide by decisions of the Local Board. See *Sheet Metal Workers Local 17 (J. Slotnik Co.)*, 197 NLRB 1127, 1129 (1972).⁷

As to the 1978 agreement between the Unions, we note at the outset that Local 17 contends for the first time in its posthearing brief that the 1978 agreement is a voluntary method for resolution of the dispute. Previously, throughout the entire dis-

⁷ Local 33 and Environmental contend that Local 33 withdrew from the jurisdiction of the Boston Local Board in 1981, but Local 17 argues that the withdrawal was ineffective. We find it unnecessary to resolve this issue in light of our finding that neither Volpe nor Environmental is bound by the decisions of the Boston Local Board.

pute Local 17 asserted both to the Boston Local Board and to Local 33 that the disputed work was not encompassed within the 1978 agreement despite Local 33's position that it was so encompassed. In any case, the International representatives of the Union, pursuant to direction of the Boston Local Board, did in fact meet to resolve this dispute but were unable to do so. Thus, this agreement does not presently constitute an available means for the voluntary resolution of the dispute. See *Iron Workers Local 383 (J. P. Cullen Construction)*, 235 NLRB 463, 465 (1978); *Sheet Metal Workers Local 418 (Young Plumbing)*, 224 NLRB 993, 996 (1976). Accordingly, we conclude that we may appropriately proceed to determine the dispute before us.

E. Merits of the Dispute

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various relevant factors.

1. Collective-bargaining agreement

Environmental has a collective-bargaining agreement with Local 33 covering the disputed work. Environmental has no collective-bargaining agreement with Local 17. We find this factor favors the award of the work to Local 33.

As noted above, Local 17 and Local 33 are parties to the 1978 Metal Suspended Ceiling Systems agreement, to which Environmental's president also stated he was bound. Both Local 33 and Environmental contend that the disputed work is encompassed within section 2⁸ of the agreement and therefore is the work of carpenters. Local 17 contends that the disputed work is not encompassed within the agreement. We find that the disputed work is not clearly encompassed or excluded from the language of section 2. Therefore, this factor favors neither Union.

2. Environmental's assignment and past practice

Environmental has installed ceilings for approximately 14 years and during this time has assigned the disputed work to its employees represented by various Carpenters locals. We find that Environmental has consistently maintained a practice of assigning the disputed work to employees represent-

ed by the Carpenters. This factor favors an assignment of the work to members of Local 33.

3. Relative skills and efficiency and economy

Environmental contends, and Local 17 does not contest, that the skills necessary to perform the disputed work are basic skills of carpenters and that the tools necessary to perform the work are regular tools of carpenters. Further, because the disputed work is only a small percentage of the total construction work performed by Environmental pursuant to its subcontract with Volpe, Environmental engages in a considerable amount of interchange of its carpenters between the disputed work and its other work not in dispute. Assignment of the disputed work to Local 17 would result in two separate crews, both of which would work only sporadically, resulting in less productivity and higher cost to Environmental. Accordingly, we find that considerations of economy and efficiency support Environmental's assignment of the disputed work to employees represented by the Carpenters.

Awards

As noted above, the Boston Local Board awarded the disputed work to members of Local 17. Further, the Boston Local Board has awarded similar work to sheet metal workers involving a Massachusetts General Hospital construction project. However, this award is presently on appeal by the Carpenters Union. Local 17 also introduced evidence of other awards made by the Boston Local Board to sheet metal workers rather than carpenters, but it is unclear whether the work involved in those awards was similar to the disputed work. Although this factor tends to favor an assignment of the disputed work to employees represented by Local 17, it does not outweigh the factors, set forth above, which favor employees represented by Local 33.

Conclusions

Upon the entire record in this case, we conclude that Environmental's employees who are represented by Local 33 are entitled to perform the work in dispute. This award is supported by Environmental's collective-bargaining agreement with Local 33, its past practice of assigning such work to employees represented by the Carpenters, and the relative efficiency and economy of such an assignment. In making this determination, we are awarding the work in question to employees who are represented by Local 33, but not to that Union or its members. The present determination is limited

⁸ Sec. 2 provides:

(a) All "lay-in" and/or "drop-in" exposed grid suspended metal ceiling systems shall be installed in their entirety by members of the United Brotherhood of Carpenters and Joiners of America.

(b) "Direct" hung or "wall" hung exposed grid metal ceiling systems shall be installed in their entirety by members of the United Brotherhood of Carpenters and Joiners of America.

to the particular controversy which gave rise to this proceeding.⁹

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Environmental Interiors, Inc., represented by Carpenters Union Local 33, a/w United Brotherhood of Carpenters & Joiners of America, AFL-CIO, are entitled to perform the handling, distribution, and installation of bent metal coves, acrylic louvers, and metal wall moldings at

⁹ In the absence of any evidence that Local 17 threatened either Volpe or Environmental with any job action on future sites if its members were not assigned the disputed work, and in view of the testimony of Edward Marks, Local 17's business representative, that he did not intend to engage in any picketing on future sites regarding the assignment of the disputed work, we find a broad order is unwarranted.

the construction site of the Department of Transportation building located at Park Square, Boston, Massachusetts.

2. Sheet Metal Workers Local 17, a/w Sheet Metal Workers International Association, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Environmental Interiors, Inc., to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Sheet Metal Workers Local 17, a/w Sheet Metal Workers International Association, shall notify the Regional Director for Region 1 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.